

**REMARKS**

Claims 1 – 3 and 5 – 15 are currently pending in the application. Claims 1 – 3 and 5 – 15 are rejected.

***Claim Rejections – 35 USC 102***

Claims 1, 5 and 13-15 were rejected under 35 U.S.C. § 102(b) as anticipated by O' Brien, US 5,320,107.

Claims 1 and 13 to 15 are amended to overcome the instant rejection by defining the pressure displaceable member as being fixed at an anchoring position to the interior of the device.

O'Brien discloses a spirometer for in-home use by an individual with a respiratory disorder such as asthma. The device measures the peak expiratory air flow rate and provides a means to compare the current peak rate with the historical peak rate. The spirometer comprises an air flow channel having a terminus to receive air blown in by the individual, a flow rate measuring chamber connected to the channel and an adjustable zone graph which gives an immediate visual answer to show how the current peak flow rate compares to past rates measured when the individual is healthy.

In particular O'Brien has a pressure displaceable member, piston, 24 which rides up and down to leave marker 26 at the uppermost point of its ride, thereby to indicate the peak pressure. The pressure displaceable member cannot be described as having any kind of anchoring location since it rides up and down on the spring.

By contrast, in the claim as presently amended, the pressure displaceable member does not ride up and down but merely flaps or pivots or expands about a fixed location on the interior wall.

The reason is that in the present invention the purpose of the pressure displaceable member is to establish the presence or absence of breathing without in any way interfering with the breathing process. This latter point is significant because the device is for first aid teams arriving at the scene of an accident or the like to make a rapid determination of who is alive and who is not. They certainly would not wish to do anything to impede the breathing of accident victims who are barely able to breathe. The flap or pivoted member of the present claim is suitable for detecting

breathing of injured persons, whereas the peak flow detector of O'Brien would most likely suffocate such patients and are only intended to measure peak breathing flow in circumstances where the fact of breathing may be taken for granted.

Claim 5 is believed to be allowable as being dependent on an allowable main claim.

***Claims Rejections – 35 USC 103***

The remaining dependent claims are rejected under 35 USC 103 as being unpatentable over O'Brien in view of Hamilton, O'Brien alone and O'Brien in view of Aylsworth. Neither Hamilton nor Aylsworth teach a pressure displaceable member which is pivoted or hinged or otherwise fixed at an anchor location to the interior of the device. The remaining dependent claims are therefore believed to be allowable as being dependent on allowable main claims.

In view of the foregoing, it is submitted that claims 1-3 and 5-15 pending in the application are allowable. An early Notice of Allowance is therefore respectfully requested.

Respectfully submitted,



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